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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

COLLINS COMPUTING, INC.,

Plaintiff and Respondent,

v.

ALEX PITT,

Defendant and Appellant.

G048539

(Super. Ct. No. 30-2010-00431401)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Charles Margines, Judge. Affirmed.

Law Offices of Joseph Sarnowski and Joseph Sarnowski for Defendant and Appellant.

Brady, Vorwerck, Ryder & Caspino and Ravi Sudan for Plaintiff and Respondent.

INTRODUCTION

Alex Pitt appeals from a postjudgment order denying him relief from an earlier order adding him as a judgment debtor to a judgment obtained by Collins Computing, Inc., against one of the numerous companies Pitt founded named National Payment Provider or a variation thereof (NPP). The trial court found that Pitt failed to meet all the requirements necessary to invoke the court's equitable power to set aside a judgment and denied the motion for relief. We affirm the trial court's order because Pitt has failed to establish an abuse of discretion.

FACTS

Collins Computing sued NPP for failure to pay bills relating to software Collins Computing provided to NPP. The matter went to arbitration, and the arbitrator awarded Collins Computing \$260,933, while denying NPP any recovery on its counterclaim. The trial court confirmed the arbitration award in January 2011.

Collins Computing conducted NPP's judgment debtor examination in October 2011; Pitt appeared as the company's witness. After the examination, Collins Computing moved to amend the judgment to add several related companies and Pitt individually as judgment debtors. The motion was unopposed, and the court granted it in July 2012.

Pitt moved to set aside the order naming him as an individual judgment debtor. He apparently asserted he had not received the motion to amend the judgment adding him as a debtor.¹ The court denied this motion without prejudice in February 2013.

Pitt then renewed the motion in March 2013. Because he was beyond the six-month period specified in Code of Civil Procedure section 473, subdivision (b), he based his motion on the court's equitable power to set aside an order because of extrinsic

¹ The first motion to vacate the order, filed under Code of Civil Procedure section 437, subdivision (b), is not part of the record. We infer the basis of the motion from the court's tentative ruling.

fraud or mistake. The court denied the motion because he did not have a meritorious defense. Pitt has appealed from the order denying his second motion.

DISCUSSION

“‘It was a settled doctrine of the equitable jurisdiction – and is still the subsisting doctrine except where it has been modified or abrogated by statute . . . that where the legal judgment was obtained or entered through fraud, mistake, or accident, or where the defendant in the action, having a valid legal defense on the merits, was prevented in any manner from maintaining it by fraud, mistake, or accident, and there had been no negligence, laches, or other fault on his part, or on the part of his agents, then a court of equity will interfere at his suit, and restrain proceedings on the judgment which cannot be conscientiously enforced. . . . The ground for the exercise of this jurisdiction is that there has been no fair adversary trial at law.’ [Citation.] Typical of the situations in which equity has interfered with final judgments are the cases where the lack of a fair adversary hearing in the original action is attributable to matters outside the issues adjudicated therein which prevented one party from presenting his case to the court, as for example, where there is extrinsic fraud [citations] or extrinsic mistake. [Citations.]” (*Olivera v. Grace* (1942) 19 Cal.2d 570, 575.) We review an order on a motion to set aside a judgment for abuse of discretion. (See *In re Marriage of Grissom* (1994) 30 Cal.App.4th 40, 46; *Perkins v. Dawson* (1963) 222 Cal.App.2d 610, 615.)

The moving party must make three showings in order to qualify for equitable relief after the time for statutory relief has expired: a meritorious case, a satisfactory excuse for the delay, and diligence in correcting the problem. (*Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, 738.) Pitt persuaded the trial court he had been badly served by his previous attorney, thereby satisfying the excuse and diligence elements. (See *County of San Diego v. Department of Health Services* (1991) 1 Cal.App.4th 656, 664 [attorney’s total failure to represent client grounds for relief].) He was unable, however, to convince the trial court of the merits of his case.

Although the motion to add him as a judgment debtor to the NPP judgment is not part of the record before us, we infer from the arguments made in Pitt's set-aside motion and in its opposition that Collins Computing presented evidence NPP was Pitt's alter ego.

"In California, two conditions must be met before the alter ego doctrine will be invoked. First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone. [Citations.] 'Among the factors to be considered in applying the doctrine are commingling of funds and other assets of the two entities, the holding out by one entity that it is liable for the debts of the other, identical equitable ownership in the two entities, use of the same offices and employees, and use of one as a mere shell or conduit for the affairs of the other.' [Citations.] Other factors which have been described in the case law include inadequate capitalization, disregard of corporate formalities, lack of segregation of corporate records, and identical directors and officers." (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538-539.)

In order to establish a meritorious defense and thus to qualify for equitable relief, Pitt had to demonstrate a sufficient separation between himself and NPP and no inequitable result if he and the corporation were treated as distinct entities. A good start would have been to present admissible evidence refuting, point by point, the evidence Collins Computing had put before the trial court when it moved to add Pitt to the judgment, which evidence caused the court to regard NPP as Pitt's alter ego. The evidence Pitt placed before the trial court in the set-aside motion was, however, thin, conclusory, and ambiguous – in a word, insufficient.² Under the abuse of discretion

² Among other deficiencies, Pitt did not explain why so many NPP entities had been created and dissolved, or even which NPP entity had the contract with Collins Computing. He also claimed that NPP (which one unspecified) had capitalization of \$3 million, but did not explain where this money had gone or why it could not be used to pay off the judgment.

standard, we may not disturb the trial court's conclusion that Pitt failed to make a case for a meritorious defense.

DISPOSITION

The order denying Pitt's motion for relief from the order amending the judgment to add him as a judgment debtor is affirmed. Respondent is to recover its costs on appeal.

BEDSWORTH, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.